

No. 12,977

IN THE

United States Court of Appeals  
For the Ninth Circuit

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JOHN WALDON,

*Appellant,*

VS.

E. B. SWOPE, Warden, United States  
Penitentiary, Alcatraz, California,

*Appellee.*

BRIEF FOR APPELLEE.

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## Subject Index

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	Page
Jurisdictional statement .....	1
Statement of the case .....	2
Issues .....	3
Argument .....	4
Conclusion .....	4

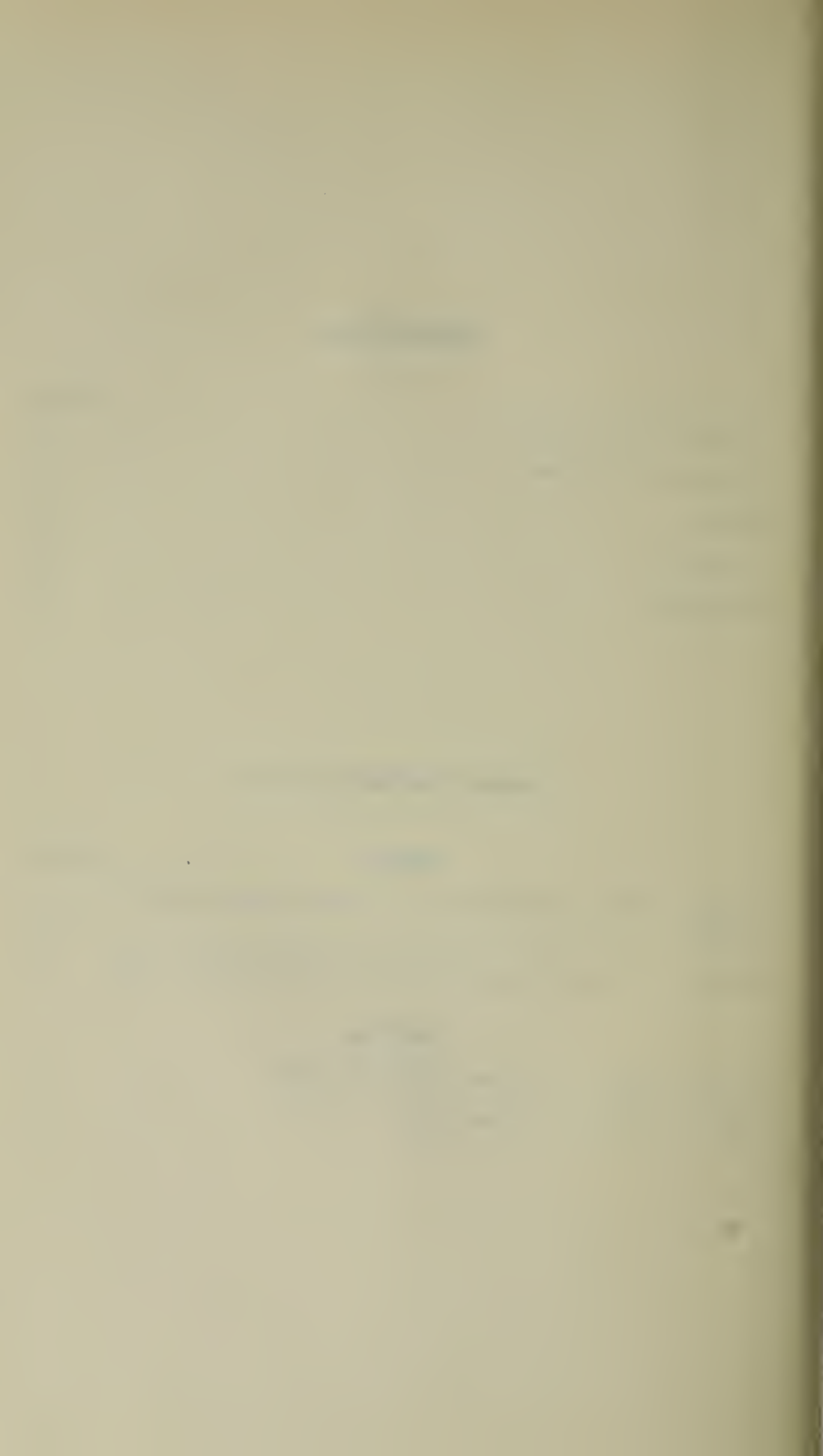
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## Table of Authorities Cited

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Cases	Pages
Waldon v. Swope, 184 F. (2d) 185, certiorari denied 340 U.S. 912 .....	2, 4
Waldon v. United States (E. Dist. Ill.), 84 Fed. Supp. 449..	2

Statutes	
Title 28 U.S.C.A., Sections 2241, 2243, 2255 .....	1
Title 28 U.S.C.A., Section 2253 .....	1



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**BRIEF FOR APPELLEE.**

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**JURISDICTIONAL STATEMENT.**

This is an appeal from an order of the United States District Court for the Northern District of California, hereinafter called "the Court below", denying appellant's petition for a writ of habeas corpus. (Tr. 25.) The Court below had jurisdiction of the habeas corpus proceedings under Title 28, U.S.C.A., Sections 2241, 2243 and 2255. Jurisdiction to review the order of the Court below denying the petition is conferred upon this Honorable Court by Title 28, U.S.C.A., Section 2253.

### STATEMENT OF THE CASE.

This is the second petition for writ of habeas corpus which the appellant has unsuccessfully urged in the Court below. On appeal from the order denying the first petition, Dist. Ct. No. 29233-E, this Honorable Court in deciding adversely to appellant filed the following brief opinion:

“This appeal is from an order denying a petition for a writ of habeas corpus. The order is affirmed. See *United States v. Waldon*, 7 Cir., 114 F. 2d 982; *Waldon v. United States*, 312 U.S. 681; *Id.*, 324 U.S. 847, 889; *Id.*, D.C.E.D. Ill., 84 F. Supp. 449.”

*Waldon v. Swope*, 184 F. (2d) 185; certiorari denied 340 U.S. 912.

The facts leading up to filing of these petitions and the contentions alleged therein are substantially set forth in the memorandum opinion of the Trial Judge, the Honorable Walter C. Lindley, denying appellant's motion to vacate his judgment and sentence.

*Waldon v. United States* (E. Dist. Ill.), 84 Fed. Supp. 449.

When the appellant, an inmate of the United States Penitentiary at Alcatraz, California, filed the instant petition for writ of habeas corpus (Tr. 1-24) the Court below summarily entered the following order denying the said petition:

“Petitioner having filed his petition for Writ of Habeas Corpus in the above entitled Court and the moving papers have been considered,

IT IS ORDERED that the Writ of Habeas Corpus be, and the same is hereby DENIED.

DATED: May 11, 1951.

GEORGE B. HARRIS,  
United States District Judge.

*Waldon v. United States*, 84 F. Supp. 449;

*Redmon v. Squire*, 162 F. (2d) 195;

*Waldon v. Swope*, 29233-E (Nov. 23, 1949).''

(Tr. 25.)

From this order appellant now appeals to this Honorable Court. (Tr. 26.)

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#### ISSUES.

The issues involved herein, as likewise involved in the original appeal, may, in substance, be stated as follows:

Is the appellant entitled to relief by habeas corpus because

1. women were excluded from the trial jury panel, whose members convicted him in the Eastern District of Illinois in February of 1940?

and because

2. he was sentenced to fine and imprisonment under authority of a statute where only imprisonment was permitted and such fine was partially paid by distraint of his personal property before judgment was corrected in his absence to eliminate the fine?

**ARGUMENT.**

Inasmuch as the exact issues raised by the appellant in our case at bar were decided adversely to him in the decision of this Honorable Court in *Waldon v. Swope*, supra, appellee will rely solely upon this decision and the authorities stated therein as his sole argument in this appeal.

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**CONCLUSION.**

In view of the foregoing, it is respectfully urged that the decision of the Court below is correct and should be affirmed.

Dated, San Francisco, California,  
August 24, 1951.

**CHAUNCEY TRAMUTOLO,**

United States Attorney,

**JOSEPH KARESH,**

Assistant United States Attorney,

*Attorneys for Appellee.*